

Renewal of Intellectual Property Execution Auction Regulations to Support Creative Economy Actors Financing Schemes

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Abstract: Government Regulation Number 24 of 2022 concerning the Implementation of Law Number 24 of 2019 concerning the Creative Economy aims to optimize intellectual property as credit or financing collateral for creative economy actors. From the banking side, intellectual property as an object of collateral cannot be implemented for various reasons, including those related to the execution of intellectual property in the event of bad credit or financing. Eventhough auction regulations recognize intellectual property as intangible assets that can be executed, they still don't provide legal certainty for both creditors and debtors. This research aims to analyse regulatory constraints in intellectual property execution auctions and renewal in auction regulations that need to be carried out to support creative economy financing schemes. This research uses a normative juridical approach with analytical descriptive research specifications and qualitative juridical data analysis. Based on the research, the following results were obtained: Although intellectual property is recognized as an object of execution auctions, regulation haven't provide certainty regarding the execution mechanism, especially regarding the transfer of intellectual property rights. So, the idea is to make the rules stricter so that execution auctions can support intellectual property-based financing schemes for people working in the creative economy.

Keywords: : Financing; Creative Economy Actors; Intellectual Property; Execution Auction

1. Introduction

The Indonesian government, through Law Number 24 of 2019 concerning the Creative Economy ("Creative Economy Law"), is responsible for creating and developing a creative economic ecosystem so that it can contribute to the national economy. This contribution increases global competitiveness, thereby supporting sustainable development. Sustainable development itself is one of the foundations for organizing a national economy based on economic democracy, as stated in Article 33, Paragraph 4, of the 1945 Constitution of the Republic of Indonesia ("1945 Constitution").

The creative economy is a concept for realizing sustainable economic development based on creativity.¹ More comprehensively, the definition of the creative economy based on Article 1 of the Creative Economy Law is the embodiment of added value from intellectual

¹ Sutriyanti Sutriyanti, "Pengaturan Ekonomi Kreatif Guna Mengembangkan Sumber Ekonomi Baru," *Journal Kajian* 22, no. 4 (December 2017): 269, <http://dx.doi.org/10.22212/kajian.v22i4.3915>.

property originating from human creativity based on cultural heritage, science, and/or technology. The three main things that are the basis of the creative economy are creativity, innovation, and discovery.² The following are the characteristics of the creative economy, including:³

1. Intellectually based creation. This means that there is a great need for creativity and other expertise in each sector, relying on the knowledge and experience of business people.
2. Flexible. An innovation in the field of creative economy must always be developed by economic activity; therefore, existing innovations are expected to be flexible to adapt to the market and easily accepted by consumers.
3. Requires collaboration. In terms of the creative economy, it requires collaboration between entrepreneurs and the government as policy regulators.
4. Creative idea. Ideas are the essential element that needs to be cultivated in the creative economy to foster creativity and innovation within this domain.
5. Not limited. The creative economy relies on the unrestricted creativity and invention of all business actors involved in product creation. There are no set limits or constraints, allowing them to generate innovative solutions based on their knowledge and experience.

The creative economy sector in Indonesia consists of seventeen distinct subsectors, which include game development, architecture, interior design, music, fine arts, product design, fashion, culinary arts, animated films and videos, photography, visual communication design, television and radio, crafts, advertising, performing arts, publishing, and apps. During the 4th World Cultural Industry Forum (WCIF) in Daegu, South Korea, on June 14, 2023, Angela Tanoesoedibjo, the Vice Minister of Tourism and Creative Economy, announced that in 2022, the creative economy in Indonesia made up 6.53% of the country's GDP, amounting to IDR 1134.9 trillion.⁴ In addition, during the 'National Meeting of National Creative Economy Actors' held on July 31, 2023, in Jakarta, the Minister of Tourism and Creative Economy, Sandiaga Uno, conveyed his aspiration to position the creative economy as the driving force behind the future of the Indonesian economy, recognizing its significant contribution to the national economy.⁵

The following is the seventeen subsectors of the Indonesian creative economy sector:⁶

² Haswan Yunaz et al., *Ekonomi Kreatif*, ed. Ari Yanto and Diana Purnama Sari, Cet. 1 (Padang: Global Eksekutif Teknologi, 2022), 184–185.

³ Yunaz et al., 184–185.

⁴ I Gusti Ayu Dewi Hendriyani, "Siaran Pers: Wamenparekraf Sampaikan Kebangkitan Ekonomi Kreatif Indonesia Dalam WCIF 2023 Di Daegu, Korea Selatan," June 15, 2023, <https://www.kemenparekraf.go.id/berita/siaran-pers-wamenparekraf-sampaikan-kebangkitan-ekonomi-kreatif-indonesia-dalam-wcif-2023-di-daegu-korea-selatan>.

⁵ I Gusti Ayu Dewi Hendriyani, "Siaran Pers: Menparekraf: Ekonomi Kreatif Perkuat Capaian Target Indonesia Emas 2045," Agustus 2023, <https://kemenparekraf.go.id/berita/siaran-pers-menparekraf-ekonomi-kreatif-perkuat-capaian-target-indonesia-emas-2045>.

⁶ Ministry of Tourism and Creative Economy, "Subsektor Ekonomi Kreatif," November 26, 2023, <https://kemenparekraf.go.id/layanan/Subsektor-Ekonomi-Kreatif>.



Regulation is one of the essential components that must fully support the development of the creative economy. Hence, the government has achieved a significant legislative breakthrough in the Creative Economy Law, specifically by implementing a system that allows creative economy actors to obtain financing through intellectual property. According to the implementing regulations of the Creative Economy Law, specifically Government Regulation Number 24 of 2022 concerning the Creative Economy ("GR on Creative Economy"), an intellectual property-based financing scheme refers to a financing scheme where intellectual property is used as collateral for credit owed to bank or non-bank financial institutions. This allows these institutions to provide financing to individuals or entities involved in the creative economy. The GR on Creative Economy was ratified by President Joko Widodo on July 12, 2022, and will be enforced one year after its issuance, namely on July 12, 2023.

It is worth noting Article 9 paragraph 1 of the GR on Creative Economy, which explores the utilization of intellectual property as a form of collateral for debt by both banks and non-bank financing institutions. This provision aims to facilitate financing schemes that are based on intellectual property. Both Singapore and Thailand have historically utilized intellectual property as assets for securing debt. The Intellectual Property Office of Singapore (IPOS) has partnered with multiple financial institutions to accept intellectual property rights as collateral assets. These institutions include the Development Bank of Singapore (DBS), Overseas Chinese Banking Corporation (OCBC), Evia Capital Partners Pte Ltd., Resona Merchant Bank Asia Ltd., and United Overseas Bank (UOB).⁷ The Thai banks that collaborate on using trade secrets as collateral include SME Bank, Bangkok Bank, and Government Savings Bank.⁸ Hence, it is imperative for the government, in its role as a regulator, to diligently consider the legal dimensions regarding intellectual property as a form of collateral. This would enable financing schemes that are based on intellectual property to effectively contribute to the advancement of Indonesia's creative economy.

From the perspective of financing institutions, especially banks, there are no regulations from the Financial Services Authority ("FSA", *Otoritas Jasa Keuangan*) regarding

⁷ Fenessa Malany, Abdul Halim Barkatullah, and Rachmadi Usman, "Hak Cipta Sebagai Objek Jaminan Fidusia," *Wasaka Hukum* 10, no. 2 (August 2022): 222, <https://ojs.stihsa-bjm.ac.id/index.php/wasaka/article/view/82>.

⁸ Irene Maria Angela and Switcha Differentia Ariapramuda, "Problematisasi Pelaksanaan Hak Cipta Atas Permainan Video Sebagai Objek Jaminan Fidusia," *Padjadjaran Law Review* 9, no. 1 (August 19, 2021): 4, <https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/485>.

intellectual property as an object of debt collateral. In a press release dated April 4, 2023, the FSA supports the implementation of the GR on Creative Economy by creating synergy between the FSA and related institutions, creative economy players, and the banking industry.⁹ Making intellectual property a form of debt collateral presents several difficulties, including the following: 1) the required form of engagement is not currently subject to regulation;¹⁰ 2) it necessitates the development of guidelines for determining economic value, which still require study and regulation by various parties who are experts in the field;¹¹ 3) requiring an organization to figure out how much intellectual property is worth so that banks can use it as a guide;¹² 4) figuring out how to execute intellectual property and also organizations that help with the execution of intellectual property used as collateral;¹³ and 5) setting up a secondary market that hasn't happened yet. available so that at the time of execution, effective sales cannot be made, so banks have difficulty getting a return on the credit or financing that has been provided.¹⁴

This article will examine the use of intellectual property as collateral for debts incurred by those in the creative economy sector. It will also explore the circumstances under which intellectual property may be auctioned due to defaults by these individuals. Additionally, it will address the existing obstacles in the auction regulations that hinder the execution of intellectual property as collateral for creative economy actors. Finally, it will provide the latest updates on this matter. Regulating intellectual property execution auctions is essential to facilitate intellectual property-based financing solutions.

2. Method

The research method used is the normative juridical method. The normative juridical method is research carried out to discover legal principles and theories that are linked to existing practices in the field.¹⁵ By conducting searches of regulations and literature

⁹ Aman Santosa, "Siaran Pers SP 40/GKPB/OJK/IV/2023. Sinergi Mendukung Penggunaan Kekayaan Intelektual Sebagai Agunan Kredit," April 4, 2023, <https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/Sinergi-Mendukung-Penggunaan-Kekayaan-Intelektual--Sebagai-Agunan-Kredit.aspx>.

¹⁰ Zefanya Junita Kawung, "Tinjauan Yuridis Tentang Hak Cipta yang Dapat Dijadikan Obyek Jaminan Fidusia Berdasarkan Pasal 16 Angka (3) Undang-Undang Nomor 24 Tahun 2014," *Lex Privatum* 7, no. 2 (October 21, 2019): 89, <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/25894>.

¹¹ Muhammad Ade Rafli, Erlina Bachri, and Suta Ramadan, "Implementasi Pembiayaan Berbasis Kekayaan Intelektual Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022 tentang Ekonomi Kreatif (studi pada Dirjen Kekayaan Intelektual Kementerian Hukum dan HAM Provinsi Lampung dan Bank Indonesia: Kekayaan Intelektual dan Ekonomi Kreatif.," *Journal Presumption of Law* 5, no. 1 (April 28, 2023): 103, <https://doi.org/10.31949/jpl.v5i1.4497>.

¹² I Gede Agus Kurniawan, "Valuasi Merek sebagai Jaminan Kredit Perbankan: Relevansi dalam Pembentukan Lembaga Penilai Kekayaan Intelektual," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 9, no. 4 (December 31, 2020): 770, <https://doi.org/10.24843/JMHU.2020.v09.i04.p08>.

¹³ Mochamad Januar Rizki, "HKI Sebagai Jaminan Utang, Ini Aspek-Aspek Hukum Yang Perlu Dicermati," Hukum Online, September 2, 2022, <https://www.hukumonline.com/berita/a/hki-sebagai-jaminan-utang--ini-aspek-aspek-hukum-yang-perlu-dicermati-lt6311b3f59522d/?page=2>.

¹⁴ Tengku Habib Ihza Husny, "Tantangan Dalam Implementasi Kekayaan Intelektual Sebagai Jaminan Pembiayaan Berdasarkan Peraturan Pemerintah Nomor 24 Tahun 2022," *Jurnal Ilmu Sosial dan Pendidikan* 7, no. 3 (2023): 2342, <http://dx.doi.org/10.58258/jisip.v7i3.5339>.

¹⁵ Setiawan Wicaksono, "Keabsahan Perjanjian Pinjaman Melalui Penyelenggara Teknologi Finansial Tidak Terdaftar," *Law Review XXI*, no. 1 (July 2021): 80, <http://dx.doi.org/10.19166/lr.v0i0.3275>.

related to the issue under study, this legal research examines legal materials in the form of secondary library data (library research) as the foundational material for research.¹⁶

3. Discussion

3.1. Intellectual Property as An Object of Guarantee for Creative Economy Actors

Intellectual property is creativity resulting from human thought to fulfil the needs and welfare of human life.¹⁷ Furthermore, Rachmadi Usman defines intellectual property as the right to ownership of works that arise or are born due to human intellectual abilities in the fields of science and technology.¹⁸ These works are intangible objects as a result of a person's or human's intellectual abilities in the field of science and technology through their creativity, taste, intention and work.¹⁹

Intellectual property refers to the unique legal rights provided by the government to individuals who create or invent something of economic value. These rights can be obtained automatically or through a formal registration process.²⁰ Essentially, a creator, inventor, or author is entitled to legal protection due to the inherent worth of their product or discovery.

The restrictions governing patent rights were initially established in England in 1623 under the Statute of Monopolies, and in the United States under the Patent Act of 1791.²¹ The establishment of legislation regarding intellectual property in the global arena may be traced back to the inception of the Paris Convention of 1883, which focused on patents, trademarks, and design, and the Bern Convention of 1886, which addressed copyright matters.²² The two conventions addressed the standardization of trade, information interchange, minimal protection and procedures, and the acquisition of intellectual property rights. The formation of the World Intellectual Property Organization (WIPO) was facilitated by the establishment of these two treaties by the United International Bureau for the Protection of Intellectual Property. Additional legislation about intellectual property rights is encompassed under the outcomes of the Uruguay discussions, also referred to as the Uruguay Round, which deliberated on tariffs

¹⁶ Dewi Kania Sugiharti et al., *Metodologi Penelitian Bidang Hukum: Suatu Pendekatan Teori dan Praktik* (Jambi: Sonpedia Publishing Indonesia, 2023), 102.

¹⁷ Taufik H. Simatupang, "Sistem Hukum Perlindungan Kekayaan Intelektual Dalam Rangka Meningkatkan Kesejahteraan Masyarakat," *Jurnal Penelitian Hukum De Jure* 17, no. 2 (June 15, 2017): 205, <https://doi.org/10.30641/dejure.2017.V17.195-208>.

¹⁸ Rachmadi Usman, *Hukum Hak Atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia*, Ed. 1, cet.1 (Bandung: Alumni, 2003), 2.

¹⁹ Muchtar A. H. Labetubun and Sabri Fataruba, "Peralihan Hak Cipta Kepada Ahli Waris Menurut Hukum Perdata," *SASI* 22, no. 2 (2016): 4, <https://doi.org/10.47268/sasi.v22i2.163>.

²⁰ Haydar Khakim and Widhi Handoko, "Studi Komparasi Kebijakan Pengaturan Desain Industri Di Indonesia Dan Korea Selatan Dalam Prespektif Pembaharuan Hukum Hak Kekayaan Intelektual," *Notarius* 15, no. 1 (April 30, 2022): 441, <https://doi.org/10.14710/nts.v15i1.46053>.

²¹ Nanda Dwi Rizkia and Hardi Fardiansyah, *Hak Kekayaan Intelektual : Suatu Pengantar*, ed. Evi Damayanti, Cetakan Pertama (Bandung: Widina Bhakti Persada, 2022), 1.

²² Raditya Adi Nugraha, "Tarik menarik antara aktor negara dan non negara dalam penerapan rezim internasional tentang lisensi software (studi kasus MoU Microsoft - RI)" (Magister Thesis, Depok, Universitas Indonesia, 2010), 46, <https://lib.ui.ac.id/detail?id=135803&lokasi=lokal#>.

and global trade, or the General Agreement on Tariffs and Trade, which subsequently evolved into the World Trade Organization.²³

The Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement) by the World Trade Organization strictly stipulates that all member countries are obliged to comply with and implement the TRIPs universal standards in full compliance with protecting intellectual property rights. In implementing an international agreement or convention, Indonesia must ratify and adopt the agreement in the form of national law. Indonesia has ratified TRIPs in the form of Law Number 7 of 1994 concerning the Ratification of the Agreement Establishing the World Trade Organization. To harmonize all laws and regulations in the field of intellectual property with the TRIPs Agreement, since January 1, 2001, the TRIPs Agreement has been in full force for Indonesia. Currently, there are seven provisions regarding intellectual property that have been ratified and are in force in Indonesia in the form of laws, namely as follows:²⁴

1. Law Number 28 of 2014 concerning Copyright;
2. Law Number 13 of 2016 concerning Patents;
3. Law Number 20 of 2016 concerning Marks and Geographical Indications;
4. Law Number 29 of 2000 concerning Plant Variety Protection;
5. Law Number 30 of 2000 concerning Trade Secrets;
6. Law Number 31 of 2000 concerning Industrial Design; and
7. Law Number 32 of 2000 concerning Integrated Circuit Layout Design.

Intellectual property is an inseparable part of the creative economy because the creative economy itself is a manifestation of the added value of intellectual property. Thus, intellectual property that originates from human creativity will produce a product or work that has economic value so that it can be bought and sold. This economic value then makes intellectual property an object of debt collateral.

The practice of using intellectual property as collateral for debt is not a novel concept. The 2008 session of the United Nations Commission on International Trade (UNCITRAL) affirmed that intellectual property can serve as collateral for securing international banking credit.²⁵ Consequently, intellectual property has been acknowledged as a valuable asset that may be monetized. The Intellectual Property Office of Singapore (IPOS) in nations like Singapore offers three schemes to encourage finance using intellectual property: equity financing, loan financing, and government support. Singapore's Intellectual Property Financing Scheme (IPFS) permits commercial entities to utilize their intellectual property as collateral for securing bank loans. Under this initiative,

²³ Sutri Helfianti and Iskandar Iskandar, "Manfaat, Prosedur Dan Kendala Pendaftaran Hak Milik Intelektual," *Jurnal Tahqiqat : Jurnal Ilmiah Pemikiran Hukum Islam* 12, no. 1 (January 12, 2018): 38, <https://doi.org/10.61393/tahqiqat.v12i1.131>.

²⁴ Lastuti Abubakar, Dewi Kania Sugiharti, Tri Handayani, "Aspek Hukum Jaminan: Kesiapan Perbankan dalam Pembiayaan Berbasis Kekayaan Intelektual bagi Pelaku Ekonomi Kreatif", RKDU Unpad, (November 2023), 15.

²⁵ Patrick Oliver Ott, "UNCITRAL – United Nations Commission On International Trade Law," in *A Concise Encyclopedia of the United Nations*, ed. Helmut Volger (Brill | Nijhoff, 2010), 692–696, <https://doi.org/10.1163/ej.9789004180048.i-962.595>.

the Singapore government forms partnerships with multiple banks to distribute the burden of potential losses, to incentivize financial institutions to accept intellectual property as collateral for loans.²⁶

According to Articles 4 and 5 of the GR on Creative Economy, the government facilitates creative economy participants in obtaining loans from both bank and non-bank financial institutions by leveraging their intellectual property. This is achieved by the identification of intellectual property that possesses economic worth and granting permission for its utilization. Government facilitation encompasses streamlining the application process for recording or registering intellectual property in compliance with relevant laws and regulations in the intellectual property field. It also involves maximizing the utilization of intellectual property as a form of collateral for debt. Article 7 of the GR on Creative Economy outlines the minimum standards for applying for finance based on intellectual property. These requirements include a) financing proposal; b) having a creative economy business; c) having engagements related to the intellectual property of creative economy products; and d) having a registration letter or intellectual property certificate.

Meanwhile, based on Article 8 of the GR on Creative Economy, bank or non-bank financial institutions that provide intellectual property-based financing carry out: a) verification of creative economy businesses; b) verification of the registration letter or intellectual property certificate that is used as collateral, which can be executed in the event of a dispute or non-dispute; c) assessment of intellectual property used as collateral; d) disbursement of funds to creative economy actors; and e) receipt of financing returns from creative economy actors according to the agreement.

Theoretically, intellectual property can be classified as intangible or movable property. As an intangible, movable object, intellectual property is attached to material rights, which are absolute rights over an object, which give the creator, inventor, or holder of intellectual property the freedom to take legal action against these rights.²⁷ The meaning of the legal action is that the object to which material rights are attached can be transferred through sale, gift, or inheritance, including being used as collateral.

Before the GR on Creative Economy, the position of intellectual property as collateral in Indonesia was regulated by statutory regulations. In the Copyright Law, Article 16 paragraph (3) states that "copyright can be used as an object of fiduciary guarantee." Apart from that, the Patent Law, namely Article 108, paragraph (1), also states that "the right to a patent can be used as an object of fiduciary guarantee." Meanwhile, other laws and regulations relating to intellectual property do not explicitly state that it can be used as collateral. Even though the characteristics of intellectual property can be transferred, traded, leased, and through other agreements, it is equally possible for it to be used as an object of collateral, especially in terms of financing, considering that intellectual

²⁶ World Intellectual Property Organization., *Unlocking IP-Backed Financing: Country Perspectives* (Unknown), accessed November 10, 2023, <https://doi.org/10.34667/TIND.44582>.

²⁷ Rilda Murniati, "Tinjauan Yuridis Pengalihan Hak Kekayaan Intelektual Berdasarkan Undang-Undang Dibidang Hak Kekayaan Intelektual," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 4, no. 3 (2010): 22, <https://doi.org/10.25041/fiatjustisia.v4no3.271>.

property has an economic value that can be compared to property.²⁸ Meanwhile, the provisions in the GR on Creative Economy do not specifically differentiate between the types of intellectual property that can be used as collateral objects, but rather those that are recorded or registered.

The term collateral is a translation from Dutch, namely *zekerheid* or *cautie*, which means the debtor's ability to fulfil achievements, namely paying off his debt to the creditor by holding certain objects of economic value by the creditor as collateral for the loan or debt received by the debtor to his creditor.²⁹ If we look at the laws that apply to fiduciary guarantees in Indonesia, especially when it comes to the things that can be the subject of these guarantees, Article 1 number (4) of the Law Number 42 of 1999 concerning Fiduciary Guarantees ("Fiduciary Guarantee Law") lists the things that can be the subjects of these guarantees. These can be tangible or intangible things that can be moved. tangible, meaning that intellectual property is included in that category. In terms of existing legal provisions or regulations in Indonesia, normatively, intellectual property is feasible to use as an object of fiduciary collateral.

Article 15 of the Fiduciary Guarantee Law, states that a Fiduciary Guarantee Certificate, which is evidence that intellectual property is made the object of fiduciary collateral, has the same executorial power as a court decision that has obtained permanent legal force, financial institutions that provide financing for the perpetrator A creative economy based on intellectual property, by law, is given the right and authority to obtain repayment of its receivables by executing the intellectual property that is used as collateral through an auction. This is a logical consequence of the aim of establishing a material guarantee institution whose nature is to provide convenience and a priority position for creditors in obtaining repayment of their claim rights.³⁰

3.2. Default by Creative Economy Actors

Within an intellectual property-based financing structure, it is crucial to prioritize the consequences that arise in the event of a debtor's default or violation of a contract, particularly when they are the owner or possessor of the intellectual property in question. If creative sector actors fail to meet their obligations to financial institutions and are officially declared in default, the intellectual property will be automatically seized and executed. This aligns with the legal principle of guarantee, which aims to ensure that creditors are assured of receiving payment for the amounts owed to them.

Because intellectual property is intangible, movable property, the most appropriate collateral institution is fiduciary collateral. In a fiduciary guarantee, if the debtor or fiduciary breaks his promise or does not fulfil his performance, this will result in the execution of the fiduciary guarantee, namely the confiscation and sale of the object that

²⁸ Trias Palupi Kurnianingrum, "Hak Kekayaan Intelektual Sebagai Jaminan Kredit Perbankan," *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 8, no. 1 (2017): 42, <http://dx.doi.org/10.22212/jnh.v8i1.936>.

²⁹ Rachmadi Usman, *Hukum Jaminan Keperdataan* (Jakarta: Sinar Grafika, 2011), 66.

³⁰ Natalia Karelina, Lastuti Abubakar, and Tri Handayani, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 18/PUU-XVII/2019 dan Penegasannya Dalam Putusan Mahkamah Konstitusi Nomor 2/PUU-XIX/2021 Terhadap Eksekusi Jaminan Fidusia dan Perumusan Klausula Perjanjian," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan ke-PPAT-an* 5, no. 2 (June 30, 2022): 188, <https://doi.org/10.23920/acta.v5i2.738>.

is the object of the guarantee. Meanwhile, Article 29 of the Fiduciary Guarantee Law states that two of the three forms of executing fiduciary guarantees are through an auction method or mechanism, namely, the first is the implementation of the executorial title, and the second is the sale of one's authority through a public auction. The State Asset Management and Auction Services Office (*Kantor Pelayanan Kekayaan Negara dan Lelang*; "KPKNL") conducts public auctions for intellectual property. KPKNL is a vertical unit of the Directorate General of State Assets Management (*Direktorat Jenderal Kekayaan Negara*; "DGSAM"), Ministry of Finance, one of whose duties and functions is to carry out general sales and auctions.

The Regulation of Minister of Finance Number 122 Year 2023 concerning Auction Implementation Instructions ("PMK Auction") sets rules for auctions for the execution of fiduciary guarantees in general. However, the GR on Creative Economy doesn't say anything else about how intellectual property should be executed if creative economy actors are declared default. The mechanism for carrying out execution auctions, the required documents, and the mechanism for carrying out re-auctions is because it can be said that intellectual property is an auction object that is not yet common in Indonesia, so it is feared that it is not marketable enough like other auction objects in the form of land or buildings.

3.3. Obstacles in Auction Regulations for the Execution of Intellectual Property as Objects of Debt Collateral for Creative Economy Actors

Intellectual property as an auction object has been accommodated in terms of regulations regarding auctions, as stated in Article 6, paragraph (2), PMK Auction, which is included in the category of intangible objects. Likewise, as an object of fiduciary guarantee, the execution of fiduciary guarantee is included in the type of execution auction held by KPKNL and carried out by Class I Auctioneer (*Pejabat Lelang Kelas I*).

When conducting the auction for the enforcement of fiduciary guarantees, according to Appendix B, Special Requirements Document Number 10 of the PMK Auction, certain documents need to be submitted along with the auction application to KPKNL. These documents include the fiduciary guarantee certificate issued by the fiduciary registration office, as well as the documents proving ownership of the goods or rights that are subject to the fiduciary guarantee. Essentially, these documents assure legal certainty to creditors if the debtor is declared in default and the collateral object is executed. They also serve as evidence of the transfer of rights to the buyer who is declared the winner of the auction, by providing a quotation from the auction reports (*risalah lelang*).

According to Rachmadi Usman, auction reports as evidence of the transfer of rights have three types of evidentiary strength, including birth evidentiary force, formal evidentiary force, and material evidentiary force. However, legislation regarding intellectual property does not include or explicitly mention provisions for the transfer of intellectual property by auction as a result of the execution of fiduciary guarantees. As an illustration of intellectual property in the form of patents, Government Regulation Number 46 of 2020 concerning Requirements and Procedures for Recording Patent Transfers does not mention auction minutes as a condition for recording patents that have been transferred.

Likewise, with copyright, which in principle applies automatically, there is no obligation to register it. Although the transfer of intellectual property through auction can be interpreted as a cause of transfer due to an agreement or other reasons justified by statutory regulations (*vide*. Article 16 paragraph (2) of the Copyright Law and Article 74 paragraph (1) of the Patent Law), it is not regulated, which does not rule out the possibility of different interpretations from stakeholders, for example, the Directorate General of Intellectual Property (*Direktorat Jenderal Kekayaan Intelektual*) of the Ministry of Law and Human Rights, who receives requests for intellectual property recording, or judges if there is a dispute regarding the implementation of the auction.

Another constraint arises from financial institutions that offer funding for actors in the creative economy who rely on intellectual property. Particularly, banks have yet to establish laws through the Financial Services Authority concerning intellectual property as a form of collateral. The FSA explicitly expressed its complete endorsement of using intellectual property as a form of loan collateral, on the condition that it maintains a primary focus on the prudential principle and effective risk management. There are also additional obstacles or difficulties in transforming intellectual property into a kind of debt collateral and implementing its enforcement through auctions. These hurdles include:

1. the required form of engagement has not been regulated, especially for types of intellectual property other than copyrights and patents, whether with fiduciary guarantees or other forms of engagement;
2. there is still a need for guidelines for assessing economic value to be regulated by various parties who are experts in the field of intellectual property so that appraisal institutions can provide economic value attached to intellectual property as a reference for banks to determine limit values;
3. determination of procedures for executing intellectual property and also institutions that assist in carrying out the execution of intellectual property used as collateral; and
4. intellectual property ecosystem in the secondary market or public interest in purchasing intellectual property that is not yet available. So at the time of execution, effective sales cannot be carried out, which results in the bank having difficulty getting a return on the credit or financing that has been provided.

3.4. Renewal to Intellectual Property Execution Auction Regulations

Therefore, the government, through DGSAM as the auction regulator, needs to carry out several regulatory updates regarding intellectual property execution auctions to support financing schemes for creative economy players, as follows:

1. Relaxation of auction regulations. DGSAM can relax regulations in the auction sector (PMK Auction) by simplifying the requirements in the form of documents that must be fulfilled for the auction to execute fiduciary guarantees on intellectual property. In this way, financial institutions (banks and non-banks) are not constrained in terms of fulfilling documents, so the auction becomes more doable in terms of requirements.

2. System integration in fulfilling auction requirements. To meet the auction requirements for the execution of fiduciary guarantees as set out in the PMK Auction Attachment, specifically for intellectual property-based items, DGSAM can connect the auction.go.id website to dgip.go.id, the website of the Directorate General of Intellectual Property of the Ministry of Law and Human Rights. In this way, DGSAM can access the tender requirements documents, making it simpler for financial institutions to fulfil the documents.
3. Ratification of the Bidding Bill. The use of PMK Auction as the legal basis for conducting auctions in Indonesia can be said to be less legally strong because it is not yet in the form of a law. At this time, there were still 21 articles in force in the *Vendu Reglement Staatsblad* 1908: 189. This legal basis is a legacy from the Netherlands, so it is no longer relevant for use at this time. The new auction bill is also expected to be able to accommodate new types of auction objects, such as intellectual property.

4. Conclusion

Based on the discussion above, the things that can be concluded are as follows: 1) Intellectual property can be used as collateral for debts of creative economy actors, by the intellectual property-based financing scheme regulated in the GR on Creative Economy. 2) If creative economy actors' default or breach a contract, then the intellectual property will be executed, one of which is using a public auction through KPKNL. 3) several obstacles and challenges still exist in implementing the execution of collateral in the form of intellectual property, such as the transfer of intellectual property through auction, the form of engagement that is still not regulated, the required requirements, guidelines for assessing the economic value of intellectual property, determining procedures for executing intellectual property, and secondary markets for intellectual property that are not yet available. 4) Efforts that can be made to update intellectual property execution auction regulations include, among others, relaxing regulations, system integration in fulfilling auction requirements, auction requirements, and ratification of the Auction Bill.

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